IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

GABRIEL RUDY CORTEZ,) No. C 12-03819 EJD (PR)
Petitioner, vs.	ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS; DIRECTING PETITIONER TO PAY FILING FEE; DENYING MOTION FOR APPOINTMENT OF COUNSEL AND MOTION FOR EVIDENTIARY HEARING
GREG D. LEWIS, Warden,	
Respondent.) (Docket Nos. 2, 3 & 4)

Petitioner, a California inmate, seeks petition in <u>pro se</u> for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has filed a motion for leave to proceed in forma pauperis. (Docket No. 2.) The motion is DENIED because Petitioner has not shown an adequate level of poverty as the average monthly deposit in his account was \$23.67 and the average monthly balance in his account was \$113.38, for the six-months preceding the filing of this petition.

Petitioner has filed a motion for appointment of counsel. (Docket No. 3.) The Sixth Amendment's right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir.), cert. denied, 479 U.S. 867 (1986). Unless an evidentiary hearing is required, the decision to appoint counsel is within the discretion of the district court. See Knaubert, 791 F.2d at 728; Bashor v.

Risley, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). An	
evidentiary hearing does not appear necessary at this time, and there are no	
exceptional circumstances to warrant appointment of counsel. Accordingly,	
Petitioner's motion is DENIED. This denial is without prejudice to the Court's sua	
sponte reconsideration should the Court later find an evidentiary hearing necessary	
following consideration of the merits of Petitioner's claims.	

Petitioner's motion for an evidentiary hearing, (Docket No. 4), is DENIED as premature. The Court will <u>sua sponte</u> consider whether an evidentiary hearing is appropriate after an initial review of the petition.

Petitioner must pay the \$5.00 filing fee within thirty (30) days of the date of this order or face dismissal of this action for failure to pay the filing fee.

This order terminates Docket Nos. 2, 3 and 4.

DATED: 10/5/2012 EDWARD J. DAVILA United States District Judge

UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

GABRIEL RUDY CORTEZ,	Case Number: CV12-03819 EJD
Petitioner,	CERTIFICATE OF SERVICE
v.	
GREG LEWIS, Warden,	
Respondent.	
I, the undersigned, hereby certify that I a Court, Northern District of California.	m an employee in the Office of the Clerk, U.S. District
attached, by placing said copy(ies) in a p	_, I SERVED a true and correct copy(ies) of the lostage paid envelope addressed to the person(s) elope in the U.S. Mail, or by placing said copy(ies) into d in the Clerk's office.
Gabriel Rudy Cortez J-76501 Pelican Bay State Prison P. O. Box 7500 Crescent City, Ca 95532	
Dated: 10/9/2012	Richard W. Wieking, Clerk